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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/669,157 | 09/22/2003 | Rance W. Searle | T9539.B | 1657 |
| 20450 | 7590 | 10/18/2004 | EXAMINER | |
| ALAN J. HOWARTH P.O. BOX 1909 SANDY, UT 84091-1909 | | | VALENTI, ANDREA M | |
| | | ART UNIT | | PAPER NUMBER |
| | | | | 3643 |

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|------------------------------|------------------------|---------------------|--|
| | 10/669,157 | SEARLE ET AL. | |
| | Examiner | Art Unit | |
| | Andrea M. Valenti | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 July 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4,5,7-10 and 13-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,4,5,7-10 and 13-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,5,7-10 and 13-24, rejected under 35 U.S.C. 103(a) as being unpatentable over Australian Patent AU 9217076 to Khoury in view of U.S. Patent No. 4,287,997 to Rolfe et al.

Regarding Claims 1 and 7-10, Khoury teaches a planter comprising: (a) a first bottom (Khoury #12) (b) a first front wall (Khoury #18), a first back wall (Khoury #14), and first and second side walls (Khoury #20 and 16) disposed on said first bottom such that said first bottom, first front wall, first back wall, and first and second side walls define a first cavity for receiving a plant growth medium for supporting roots of said plants, wherein said first front wall and first and second side walls comprise a plurality of holes (Khoury #48) configured for permitting stems of said plants to extend therethrough, and wherein the first bottom, first front wall, or first back wall comprises at least one drain hole for permitting liquids to drain therethrough (Khoury #48); and

Khoury is silent on a first flange disposed on the first side wall configured for permitting attachment of a second bottom, a second front wall, and a second back wall thereto, and a second flange disposed on said second side wall configured for permitting attachment of a third bottom, a third front wall, and a third back wall thereto.

However, Rolfe teaches a flange (Rolfe #31) on the side wall of a rectangular receptacle to permit attaching additional receptacles. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Khoury with the teachings of Rolfe as an old and notoriously well-known means to connect receptacles in tandem for storage or transport. Furthermore, it would have been obvious to one of ordinary skill in the art to provide more than one receptacle device as taught by Khoury since this modification is merely the duplication of a known element for a multiple effect performing the same intended function of a storage cavity.

Claim 2, Khoury as modified teaches wherein said configured in at least two rows (Khoury #12 in element #48).

Claim 4, Khoury as modified teaches the first back wall further comprises a plurality of holes configured for permitting stems of said plants to extend therethrough (Khoury #14 and #48).

Claim 5, Khoury as modified teaches a plurality of holes, but is silent on the plurality of holes comprising the first back wall are configured in at least two rows. However, it would have been obvious modification to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the duplication of a known element for a multiple effect performing the same intended function.

Regarding Claims 13, 16, 19-22, Khoury as modified teaches the first front wall and the first back wall are each disposed on the first bottom with a hinge (Khoury #22).

Regarding Claim 14-15, 17, 23, and 24, Khoury as modified teaches a bracket disposed on the first front wall, first back wall, and first and second side walls (Rolle #30).

Response to Arguments

Applicant's arguments with respect to claims 1,2,4,5,7-10 and 13-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,515,987; U.S. Patent No. 532,687; U.S. Patent No. 2,170,714; U.S. Patent No. 3,047,185; U.S. Patent No. 3,529,742; U.S. Patent No. 3,696,960; U.S. Patent No. 5,890,613; U.S. Patent No. 5,050,755.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

06 October 2004


ROBERT P. SWIATEK
PRIMARY EXAMINER
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